

REMARKS

In view of the following remarks, the Examiner is requested to allow Claims 23-31, 36-42 and 45-51, the only claims pending and under examination in this application.

Claims 27, 41, 44, 46-51 and 53 are amended to correct minor informalities. The Applicants note that the previous second recitation of Claim 36 was renumbered to Claim 37 to correct a typographical error. Correspondingly, previous Claims 37-52 were renumbered to current Claims 38-53.

Claims 23, 31, 36 and 45 were amended to clarify the claim language and to incorporate elements from Claims 32, 34, 36, 43, 45 and 52. No new matter is added.

Claims 32-35, 43-44 and 52-53 are withdrawn as being drawn to a non-elected invention.

Claim Objections

Claim 27 was objected to for including a minor typographical error. As indicated above, Claim 27 has been amended to address this minor informality. As such, this objection may be withdrawn.

Claims 27, 40 and 49 were objected to for minor informalities. As indicated above, Claims 27, 41 (i.e., former Claim 40) and 50 (i.e., former claim 49) have been amended to address these minor informalities. As such, this objection may be withdrawn.

Claim Rejections – 35 U.S.C. § 112, second paragraph

Claims 36-41 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, the Examiner stated that the claims were indefinite due to an apparent mis-numbering of the claims. As stated above, the second recitation of Claim 36 was renumbered to Claim 37 and previous Claims 37-52 were renumbered to current Claims 38-53. In addition, the dependencies of Claims 41, 44, 46-51 and 53 were corrected in light of the renumbering of the claims. Accordingly, the Applicants respectfully request withdrawal of this rejection.

In addition, the Examiner rejected Claim 31 as allegedly being incomplete for omitting essential elements, such omission amounting to a gap between the elements. Office Action, pg. 4, ¶ 9. In addition, the Examiner alleged that, "The omitted elements are: the essential elements corresponding to the relationship between the thermometer, the temperature data, and the determination of ovulation in the subject mammal." *Id.*

As indicated above, Claim 31 has been amended to clarify the claim language by including that the means for reading and interpreting the recorded data is configured to read the recorded data and to interpret a pre-ovulation temperature spike associated with ovulation as indicative of ovulation. As such, the Applicant submits that the relationship between the thermometer, the temperature data and the determination of ovulation in the subject mammal is definite. Accordingly, the Applicant submits that Claim 31 is not indefinite under 35 U.S.C. § 112, second paragraph, and respectfully requests that this rejection be withdrawn.

Claim Rejections – 35 U.S.C. § 102

Claims 23-31, 36-42 and 45-51 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Guice et al. (U.S. Application Publication No. 2002/0010390).

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Verdegaal Bros. v. Union Oil of California, 814 F.2d 628, 631; 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). The standard for anticipation under section 102 is one of strict identity. An anticipation rejection requires a showing that each limitation of a claim be found in a single reference. *Atlas Powder Co. v. E.I. DuPont de Nemours & Co.*, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984). Further, an anticipatory reference must be enabling, so as to place one of ordinary skill in possession of the claimed invention. See *Akzo N.V. v. United States Int'l Trade Comm'n*, 808 F.2d 1471, 1479, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986), *cert. denied*, 482 U.S. 909 (1987). To anticipate a claim, a prior art reference must disclose every feature of the claimed invention, either explicitly or inherently. *Glaxo v. Novopharm, Ltd.*, 334 U.S.P.Q.2d 1565 (Fed. Cir. 1995).

Claims 24-31, 37-42 and 46-51 ultimately depend from Claims 23, 26 and 45, respectively. As indicated above, independent Claims 23, 36 and 45 have been amended. Specifically, amended Claims 23, 36 and 45 include the element of a means for connecting the thermometer to means for reading and interpreting the recorded data, where the means for connecting is configured to be connected to the means for reading and interpreting the recorded data when the thermometer is removed from the vagina of the subject mammal.

The Applicant submits that Guice is deficient because Guice does not disclose all the elements of the Applicant's claimed invention described above. In contrast to the Appellant's claimed invention, Guice discloses animal health monitoring systems that include "wireless telesensor implants containing wireless telesensors . . . ; wireless receivers, transmitters, transceivers, and/or transponders". Guice, pg. 4, ¶ [0042]. In addition, Guice discloses that "when an abnormal condition is detected by a smart telesensor . . . , an alert is (1) transmitted directly to an alerting device **74** carried by or in the proximity of personnel responsible for animal care, or, (2) transmitted to one or more receivers . . ." Guice, pg. 6, ¶ [0085].

As such, Guice discloses wireless telesensors that wirelessly transmit alerts to alerting devices or receivers without removing the telesensors from the animal. Consequently, Guice does not disclose all the elements of the Applicant's claimed invention. Therefore, the Applicant submits that Guice fails to anticipate the instantly claimed invention and respectfully request that the 35 U.S.C. § 102(e) rejection of Claims 23-31, 36-42 and 45-51 be withdrawn.

CONCLUSION

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone Bret Field at (650) 833-7770.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number STHP-018.

Respectfully submitted,

BOZICEVIC, FIELD & FRANCIS LLP

Date: May 13, 2009

By: /Rudy Ng, Reg. No. 56,741/
Rudy Ng
Registration No. 56,741

Date: May 13, 2009

By: /Bret E. Field, Reg. No. 37,620/
Bret E. Field
Registration No. 37,620

BOZICEVIC, FIELD & FRANCIS LLP
1900 University Avenue, Suite 200
East Palo Alto, California 94303
Telephone: (650) 327-3400
Facsimile: (650) 327-3231